

United States District Court
Northern District of California

HELEN J. A.,¹
Plaintiff,
v.
ANDREW SAUL,
Defendant.

Case No. 19-cv-04626-RMI

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

Re: Dkt. Nos. 23, 26

Plaintiff, seeks judicial review of an administrative law judge (“ALJ”) decision denying her application for disability insurance benefits and supplemental security income under Titles II and XVI of the Social Security Act. Plaintiff’s request for review of the ALJ’s unfavorable decision was denied by the Appeals Council, thus, the ALJ’s decision is the “final decision” of the Commissioner of Social Security which this court may review. *See* 42 U.S.C. §§ 405(g), 1383(c)(3). Both parties have consented to the jurisdiction of a magistrate judge (dkts. 6 & 12), and both parties have moved for summary judgment (dkts. 23 & 26). For the reasons stated below, Plaintiff’s motion for summary judgment is granted, and Defendant’s motion is denied.

LEGAL STANDARDS

The Commissioner's findings "as to any fact, if supported by substantial evidence, shall be conclusive." 42 U.S.C. § 405(g). A district court has a limited scope of review and can only set aside a denial of benefits if it is not supported by substantial evidence or if it is based on legal error. *Flaten v. Sec'y of Health & Human Servs.*, 44 F.3d 1453, 1457 (9th Cir. 1995). The phrase

¹ Pursuant to the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States, Plaintiff's name is partially redacted.

1 “substantial evidence” appears throughout administrative law and directs courts in their review of
2 factual findings at the agency level. *See Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019).
3 Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as
4 adequate to support a conclusion.” *Id.* at 1154 (quoting *Consol. Edison Co. v. NLRB*, 305 U.S.
5 197, 229 (1938)); *see also Sandgathe v. Chater*, 108 F.3d 978, 979 (9th Cir. 1997). “In
6 determining whether the Commissioner’s findings are supported by substantial evidence,” a
7 district court must review the administrative record as a whole, considering “both the evidence
8 that supports and the evidence that detracts from the Commissioner’s conclusion.” *Reddick v.*
9 *Chater*, 157 F.3d 715, 720 (9th Cir. 1998). The Commissioner’s conclusion is upheld where
10 evidence is susceptible to more than one rational interpretation. *Burch v. Barnhart*, 400 F.3d 676,
11 679 (9th Cir. 2005).

12 PROCEDURAL HISTORY

13 On November 17, 2015, Plaintiff filed an application for benefits, alleging an onset date of
14 July 31, 2015. *See* Administrative Record “AR” at 17.² As set forth in detail below, the ALJ found
15 Plaintiff not disabled and denied the application on August 14, 2018. *Id.* at 25. The Appeals
16 Council denied Plaintiff’s request for review on June 16, 2019. *See id.* at 3-5. Thereafter, on
17 August 9, 2019, Plaintiff sought review in this court (dkt. 1).

18 THE FIVE STEP SEQUENTIAL ANALYSIS FOR DETERMINING DISABILITY

19 A person filing a claim for social security disability benefits (“the claimant”) must show
20 that she has the “inability to do any substantial gainful activity by reason of any medically
21 determinable physical or mental impairment” which has lasted or is expected to last for twelve or
22 more months. *See* 20 C.F.R. §§ 416.920(a)(4)(ii), 416.909.³ The ALJ must consider all evidence in
23 the claimant’s case record to determine disability (*see id.* § 416.920(a)(3)), and must use a five-
24 step sequential evaluation process to determine whether the claimant is disabled (*see id.* §

25 _____
26 ² The AR, which is independently paginated, has been filed in several parts as a number of attachments to
Docket Entry #19. *See* (dkts. 19-1 through 16-26).

27 ³ The regulations for supplemental security income (Title XVI) and disability insurance benefits (Title II)
28 are virtually identical though found in different sections of the CFR. For the sake of convenience, the court
will generally cite to the SSI regulations herein unless noted otherwise.

1 416.920). “[T]he ALJ has a special duty to fully and fairly develop the record and to assure that
2 the claimant’s interests are considered.” *Brown v. Heckler*, 713 F.2d 441, 443 (9th Cir. 1983).

3 Here, the ALJ set forth the applicable law under the required five-step sequential
4 evaluation process. *AR* at 18-19. At Step One, the claimant bears the burden of showing she has
5 not been engaged in “substantial gainful activity” since the alleged date on which the claimant
6 became disabled. *See* 20 C.F.R. § 416.920(b). If the claimant has worked and the work is found to
7 be substantial gainful activity, the claimant will be found not disabled. *See id.* Here, the ALJ found
8 that Plaintiff meets the insured status requirements of the Social Security Act through March 31,
9 2020; however, the ALJ found that Plaintiff had been steadily engaged in substantial gainful
10 activity since November 13, 2017 – accordingly, the ALJ decision claimed that its focus would be
11 limited to the period between July 31, 2015 (the alleged onset date), and November 13, 2017 (the
12 date on which Plaintiff became engaged in substantial gainful activity). *AR* at 19-20.

13 At Step Two, the claimant bears the burden of showing that she has a medically severe
14 impairment or combination of impairments. *See* 20 C.F.R. § 416.920(a)(4)(ii), (c). “An
15 impairment is not severe if it is merely ‘a slight abnormality (or combination of slight
16 abnormalities) that has no more than a minimal effect on the ability to do basic work activities.’”
17 *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2005) (quoting S.S.R. No. 96-3(p) (1996)). In this
18 regard, the ALJ found that Plaintiff suffered from the following severe impairments: diabetes
19 mellitus; proliferative diabetic neuropathy with macular edema; severe ischemia; glaucoma; severe
20 neovascular (rubeotic) glaucoma in her left eye; cataracts in both eyes; status post-surgical
21 insertion of glaucoma drainage implant, and phacoemulsification of cataracts with intraocular lens
22 implantation in the left eye; and, diabetic peripheral neuropathy. *AR* at 20.

23 At Step Three, the ALJ compares the claimant’s impairments to the impairments listed in
24 appendix 1 to subpart P of part 404. *See* 20 C.F.R. § 416.920(a)(4)(iii), (d). The claimant bears the
25 burden of showing her impairments meet or equal an impairment in the listing. *Id.* If the claimant
26 is successful, a disability is presumed and benefits are awarded. *Id.* If the claimant is unsuccessful,
27 the ALJ assesses the claimant’s residual functional capacity (“RFC”) and proceeds to Step Four.
28 *See id.* § 416.920(a)(4)(iv), (e). Here, the ALJ found that Plaintiff did not have an impairment or

1 combination of impairments that met or medically equaled the severity of any of the listed
2 impairments. *AR* at 20. Next, the ALJ determined that Plaintiff retained the RFC to perform light
3 work with the following exceptions and limitations: she is able to occasionally lift and carry 20
4 pounds, while being able to frequently lift and carry 10 pounds; she can stand and walk for 2 hours
5 in an 8-hour workday, while retaining the ability to sit for at least 6 hours, with the need for a sit-
6 stand option; she requires the use of an assistive device for walking; when seated, Plaintiff should
7 be allowed to elevate one foot approximately 10 inches from the ground for up to 25% of the time;
8 the work should not require to have visual depth perception; and, the work should not call for left-
9 side peripheral vision. *Id.* at 20-23. At Step Four, the ALJ determined that Plaintiff is able to
10 perform her past relevant work as a receptionist, secretary, or as an administrative clerk. *Id.* at 23-
11 25. Accordingly, the ALJ concluded that Plaintiff has not been under a disability, “from July 31,
12 2015, through the date of this decision [August 14, 2018].” *Id.* at 25.

DISCUSSION

14 Plaintiff’s disability applications alleged an onset date of July 31, 2015. *Id.* at 17. The ALJ
15 decision found that Plaintiff had been engaged in substantial gainful activity since November 13,
16 2017, and therefore, the ALJ decision purported to address its findings only to the period between
17 July 31, 2015, and November 13, 2017. *See id.* at 19-20. Plaintiff has only advanced three
18 arguments in this court (whether the ALJ erred in not determining that Plaintiff’s leg needs to be
19 elevated for twelve, rather than ten inches during 25% of the workday; whether pain causes
20 deficits in Plaintiff’s ability to pay attention and concentrate; and, whether the ALJ erred in
21 rejecting some fraction of Plaintiff’s pain and symptom testimony). *See Pl.’s Mot.* (dkt. 23) at 5-
22 11; *see also Pl.’s Reply* (dkt. 27) at 3-7. Plaintiff has not challenged the ALJ’s determination that
23 her employment (from November of 2017 forward) constitutes substantial gainful activity.

24 In reviewing the entirety of the ALJ’s decision to determine whether each finding was
25 based on substantial evidence, the court noticed a major disconnect between the decision itself, the
26 scope of the hearing before the ALJ, and the statement in the decision to the effect that its
27 “findings [will] address the period[] the claimant did not engage in substantial gainful activity.”
28 *See AR* at 19-20. First, a review of the transcript for the hearing before the ALJ reveals that none

of the inquiries rendered during the course of that hearing were focused on the finite disability period. *See generally id.* at 33-62. Instead, the ALJ, Plaintiff, and Plaintiff's representative all proceeded as though the matter was not constrained to a closed-end and finite disability period that ranged between July of 2015 and November of 2017. In addition to this defect in the development of the hearing record (pertaining to the 27-month disability period), the ALJ's decision is attended with the same flaw. That is, while the decision states (at the outset) that its findings are limited to the 27-month period at issue, the entire remainder of the decision contains no indication that its findings are in any way limited to that period – nor could they be because the ALJ failed to develop the record in a manner that would involve a focused inquiry into this discrete period of time. *See generally id.* at 19-25. For example, the portion of the ALJ decision focused on Plaintiff's hearing testimony is either entirely focused on her activities *after* the 27-month disability period, or describes events and conditions without any reference to date or time at all. *See id.* at 21-23. Likewise, the portion of the ALJ decision focused on the medical opinion evidence suffers from the same defect. *See id.* at 23. Due to this failure to develop a record that would be focused on the 27-month period in question, it is impossible for this court to determine if the ALJ's findings from Step Two forward are based on substantial evidence.

It is well established that “[t]he ALJ in a social security case has an independent ‘duty to fully and fairly develop the record and to assure that the claimant’s interests are considered.’” *Tonapetyan v. Halter*, 242 F.3d 1144, 1151 (9th Cir. 2001) (*quoting Smolen*, 80 F.3d 1273, 1288 (9th Cir. 1996)). Because administrative proceedings of this sort are inquisitorial in nature, the ALJ is not permitted to simply sit back and take the role of a mere umpire; instead, the ALJ must scrupulously and conscientiously probe into the matter and actively explore for any and all relevant facts. *See Widmark v. Barnhart*, 454 F.3d 1063, 1068 (9th Cir. 2006) (*citing Higbee v. Sullivan*, 975 F.2d 558, 561 (9th Cir. 1992)). If there is so much as an ambiguity in the evidence, or if the ALJ – or a reviewing court – finds that the record is inadequate for proper evaluation of the evidence, such a finding likewise triggers the ALJ’s duty to conduct an appropriate inquiry. *See Tonapetyan*, 242 F.3d at 1151 (*citing Smolen v. Chater*, 80 F.3d 1273, 1288 (9th Cir. 1996)). Because Social Security proceedings are inquisitorial rather than adversarial, “[i]t is the ALJ’s

1 duty to investigate the facts and develop the arguments both for and against granting benefits.”
2 *Sims*, 530 U.S. at 110-11 (citing Dubin, *Torquemada Meets Kafka: The Misapplication of the*
3 *Issue Exhaustion Doctrine to Inquisitorial Administrative Proceedings*, 97 Colum. L. Rev. 1289,
4 1301-1305, 1325-1329 (1997)); *see also Richardson v. Perales*, 402 U.S. 389, 400-01 (1971)
5 (“This, we think, is as it should be, for this administrative procedure, and these hearings, should be
6 understandable to the layman claimant, should not necessarily be stiff and comfortable only for the
7 trained attorney, and should be liberal and not strict in tone and operation. This is the obvious
8 intent of Congress so long as the procedures are fundamentally fair.”).

9 Accordingly, the ALJ must take reasonable steps to ensure that the issues and questions
10 raised by the medical evidence are carefully and properly addressed, by an appropriate
11 professional with the relevant professional background, so that the disability determination may be
12 fairly made on a sufficient evidentiary record, whether favorable or unfavorable to the claimant.
13 *See Tidwell v. Apfel*, 161 F.3d 599, 602 (9th Cir. 1999); *see also Smolen*, 80 F.3d at 1288 (“If the
14 ALJ thought he needed to know the basis of [a doctor’s] opinion[] in order to evaluate [it], he had
15 a duty to conduct an appropriate inquiry, for example, by subpoenaing the physician[] or
16 submitting further questions to [him or her].”). In fact, when it is necessary to enable the ALJ (and
17 by extension, a reviewing court) to resolve a disability issue, the ALJ’s duty to develop the record
18 may require consulting a medical expert or ordering a consultative examination. *See Tonapetyan*,
19 242 F.3d at 1150 (the ALJ may develop the record in several ways, including by subpoenaing the
20 claimant’s physicians, submitting questions to the claimant’s physicians, continuing the hearing,
21 or keeping the record open after the hearing to allow for supplementation of the record).

22 As mentioned, because of the failure to develop the record, as it relates to the 27-month
23 period in question, it is not possible for this court to review any of the ALJ’s findings (from Step
24 Two forward) to determine whether or not they were supported by substantial evidence.
25 Accordingly, the case must be remanded so that a proper record can be developed. On remand, the
26 ALJ is **ORDERED** to: (1) contact Plaintiff’s treating physician, Matthew Joseph, M.D., in order
27 to solicit a revised version of his opinion, as to Plaintiff’s functional limitations, that would be
28 exclusively focused on the 27-month period in question; and (2) the ALJ shall convene and

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1 conduct a second hearing that should similarly be focused on the 27-month disability period in
2 question. The court declines to address Plaintiff's remaining issues not only because they can be
3 adequately addressed on remand, but also because the calculus underlying those issues will likely
4 change on remand given the holdings expressed herein. *See Hiler v. Astrue*, 687 F.3d 1208, 1212
5 (9th Cir. 2012) ("Because we remand the case to the ALJ for the reasons stated, we decline to
6 reach [plaintiff's] alternative ground for remand."); *see also Gutierrez v. Comm'r of Soc. Sec.*, No.
7 18-cv-02348-RMI, 2019 U.S. Dist. LEXIS 165711, at *30-31 (N.D. Cal. Sep. 25, 2019); *Abdul-Ali*
8 *v. Berryhill*, No. 18-cv-03615-RMI, 2019 U.S. Dist. LEXIS 138512, 2019 WL 3841995, at *7
9 (N.D. Cal. Aug. 15, 2019); *Augustine ex rel. Ramirez v. Astrue*, 536 F. Supp. 2d 1147, 1153 n.7
10 (C.D. Cal. 2008) ("[The] Court need not address the other claims plaintiff raises, none of which
11 would provide plaintiff with any further relief than granted, and all of which can be addressed on
12 remand."). On remand, the Commissioner is instructed to consider the other issues raised in
13 Plaintiff's briefing and modify the ensuing ALJ opinion as appropriate. *See Cortes v. Colvin*, No.
14 2:15-cv-02277-GJS, 2016 U.S. Dist. LEXIS 40580, 2016 WL 1192638, at *4 (C.D. Cal. Mar. 28,
15 2016); *Cochran v. Berryhill*, No. 3:17-cv-00334-SB, 2017 U.S. Dist. LEXIS 212380, at *21 (D.
16 Or. Dec. 28, 2017).

17 **CONCLUSION**

18 Thus, for the reasons stated above, Plaintiff's Motion for Summary Judgment (dkt. 23) is
19 **GRANTED**, and Defendant's Cross-Motion (dkt. 26) is **DENIED**. The case is **REMANDED** for
20 further proceedings pursuant to the instructions provided herein.

21 **IT IS SO ORDERED.**

22 Dated: March 23, 2021

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ROBERT M. ILLMAN
United States Magistrate Judge

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